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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/032,116	12/21/2001	Rod Walsh	4208-4041	7018
7590	02/25/2005		EXAMINER	
MORGAN & FINNEGAN, L.L.P. 345 Park Avenue New York, NY 10154-0053			VU, THONG H	
			ART UNIT	PAPER NUMBER
			2142	

DATE MAILED: 02/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/032,116	WALSH ET AL.
Examiner	Art Unit	
Thong H Vu	2142	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 31 December 2001.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-23 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1-23 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 31 December 2001 is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 12/01/4/02/4/03.  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_.

1. Claims 1-23 are pending.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-5,23 are rejected under 35 U.S.C. 102(e) as being participate by Marks et al [Marks, 6,463,447 B1].

2. As per claim 23, Marks discloses An apparatus for improving a user's perceived access speed to data network content, comprising:

a memory having program code stored therein ; and  
a processor connected to said memory for carrying out instructions in accordance with stored program code; wherein said program code, when executed by said processor [Marks, a server connects to Internet, col 3 line 44-col 4 line 17], causes said processor to perform the steps of:

- a) receiving a user input request for data from a data network [Marks, HTTP request, col 4 lines 36-62]; and
- b) determining whether said requested data is to be retrieved from the local cache or the data network [Marks, determine whether the document requested is stored locally or Web cache or other storage device, col 15 line 65-col 16 line 8]; and

c) retrieving said requested data for user consumption [Marks, return to the original request terminal, col 19 lines 35-40; col 22 line 64-col 24 line 2].

3. As per claim 1, Marks discloses A method for increasing perceived access speed to content available from a data network, comprising:

selecting data to be sent to multicast groups based on a predetermined policy [Marks, multicast channels, col 7 lines 4-24; filtering agent or predetermined policy, col 12 lines 27-65]; and sending the data over the multicast channel [Marks, multicast channels, col 7 lines 4-24].

4. As per claim 2, Marks discloses data network is an Internet, an extranet, an intranet, a VPN, or a LAN [Marks, Internet, col 3 lines 20-30].

5. As per claim 3, Marks discloses the predetermined policy is selecting data based on information from an agent that monitors web hits from the system clients [Marks, HIT notification, col 16 lines 8-15].

6. As per claim 4, Marks discloses the predetermined policy (i.e.: filtering agent) is to send promotional content such as a bundle of computer executable game files [Marks, filtering agent, col 12 lines 27-65].

7. As per claim 5, Marks discloses the predetermined policy is that the group data is taken directly from a unicast stream [Marks, unicast and multicast connections, col 5 lines 23-33].

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marks et al [Marks, 6,463,447 B1] in view of Willis et al [Willis 6,385,647 B1].

8. As per claim 6, Marks discloses A method for increasing perceived access speed to content available from a data network, comprising:

    sending the data over the multicast channel [Marks, HTTP request, col 4 lines 36-62];

    receiving the data; filtering the data [Marks, filtering agent, col 12 lines 39-54];

    storing the filtered data in a local cache [Marks, storing documents received, col 4 lines 10-15]; and

    retrieving the filtered data from the cache for user consumption [Marks, return to the original request terminal, col 19 lines 35-40; col 22 line 64-col 24 line 2].

However Marks does not explicitly detail selecting data to be sent over a **shared** multicast channel;

In the same endeavor, Willis discloses a system for selectively routing data via either network that support Internet or via satellite including the shared IP multicast [Willis, a shared multicast distribution tree, col 7 lines 25-35]

Therefore it would have been obvious to an ordinary skill in the art at the time the invention was made to take advantage the shared multicast channels as taught by Willis into the Marks apparatus in order to utilize the multicast network. Doing would provide a maximum the available channel to distribute information via Internet.

9. Claims 14,18,21 contain the similar limitations set forth in claim 6. Therefore claims 14,18,21 are rejected for the same rationale set forth in claim 6.

10. As per claim 7, Marks-Willis disclose selecting comprises selecting data based on predetermined policies [Marks, filtering agent, col 12 lines 39-54].

11. As per claim 8, Marks-Willis disclose the predetermined policy is to send the top 100 web file downloads [Marks, filtering agent, col 12 lines 39-54].

12. As per claim 9, Marks-Willis disclose the predetermined policy is to send promotional content such as a bundle of computer executable game files [Marks, filtering agent, col 12 lines 39-54].

13. As per claim 10, Marks-Willis disclose receiving the data by a reception agent [Marks, filtering agent, col 12 lines 39-54].
14. As per claim 11 Marks-Willis disclose storing the data after it has been selected .
15. As per claim 12, Marks-Willis disclose filtering the data includes filtering the data based on a user configured profile [Marks, filtering agent, col 12 lines 39-54].
16. As per claim 13, Marks-Willis disclose sending the selected content to a shared cache [Willis, a shared multicast distribution tree, col 7 lines 25-35].
17. As per claims 15,19 Marks-Willis disclose some clients are in a passive state as inherent feature of network client.
18. As per claims 16,20 Marks-Willis disclose storing the data after it has been selected [Willis, idenitifes data, stored and forward, col 16 lines 57-67].
19. As per claim 17, Marks-Willis disclose the act of selecting data to be sent over a shared multicast channel comprises selecting data based on web hits [Marks, Hit notification, col 16 lines 8-15].

20. As per claim 22, Marks-Willis disclose measuring user demand includes using an agent to monitor the web hits of the system clients [Marks, filtering agent, col 12 lines 39-54].

Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Thong Vu, whose telephone number is (571)-272-3904. The examiner can normally be reached on Monday-Thursday from 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, *Jack Harvey*, can be reached at (571) 272-3896. The fax number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval PAIR system. Status information for published applications may be obtained from either Private PMR or Public PMR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Thong Vu*  
*Patent Examiner*  
*Art Unit 2142*

